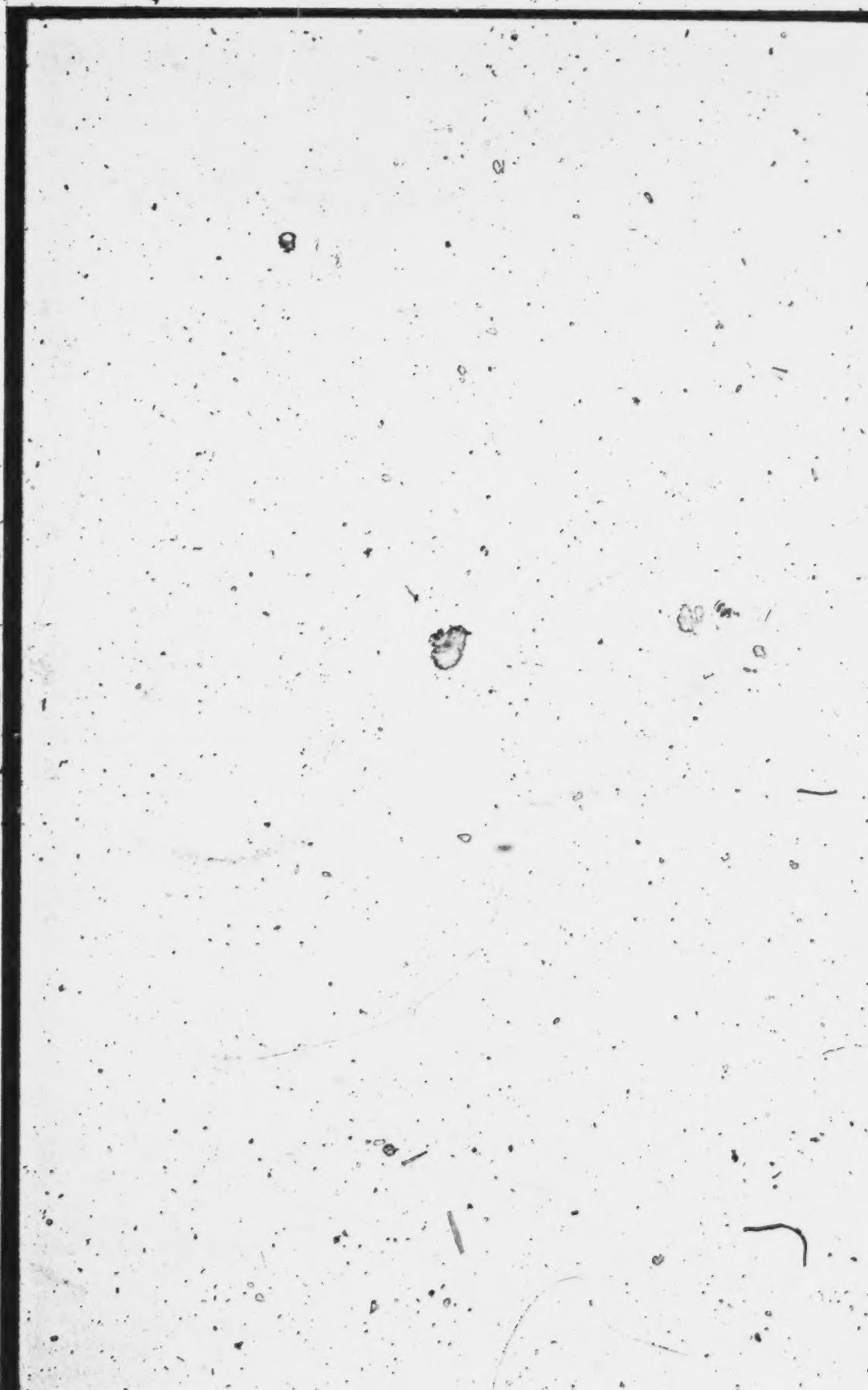

LIBRARY
SUPREME COURT, U. S.

FILED
FEB 1 1968
JOHN F. DAVIS, CLERK

NO. 850
IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1967

JESSE JAMES, STATE TREASURER OF TEXAS, ET AL.,
Appellants

v.

EVERETT M. GILMORE, JR., ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

PETITION FOR REHEARING

CRAWFORD C. MARTIN
Attorney General of Texas
NOLA WHITE
First Assistant Attorney General
A. J. CARUBBI, JR.
Executive Assistant
J. C. DAVIS
Assistant Attorney General
W. O. SHULTZ II
Assistant Attorney General
JAMES C. McCOY
Assistant Attorney General
Counsel for Appellants
Box R
Capitol Station
Austin, Texas 78711

NO. 850

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1967

JESSE JAMES, STATE TREASURER OF TEXAS, ET AL.,

Appellants

v.

EVERETT M. GILMORE, JR., ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

PETITION FOR REHEARING

NOW COME the Petitioners, Jesse James, State Treasurer of Texas, Robert S. Calvert, Comptroller of Public Accounts of Texas, and the Board of Regents of The University of Texas, appellants herein and respectfully pray for a rehearing of the above styled case in which a judgment of a three-judge court entered on September 7, 1967, was summarily affirmed by this Court on January 15, 1968 by per curiam opinion: "The Motion to Affirm is granted and the judgment is affirmed."

REASONS FOR GRANTING REHEARING

1. Petitioners continue to insist that Article 6252-7 does not violate any provision of the United States Constitution, and that the three-judge court ruling is erroneous insofar as the merits of the case are concerned. However, aside from that contention, this

Court should grant a rehearing in this cause to consider the very serious and erroneous holdings by the three-judge court on the procedural questions raised by Petitioners and the far reaching implications on future questions of venue, as to suits against officials of the State of Texas.

As can be seen by the opinion of the three-judge court rendered on September 7, 1967, and set forth in full in Appendix A of Petitioners' Jurisdictional Statement, the questions of joinder, proper venue and standing created very difficult problems for the trial court, and the conclusions reached by the trial court conflict with State court decisions on questions of substantive law relating to venue of actions against officials of the State of Texas.

The trial court's holdings on questions of substantive law relating to venue rights of state officials conflicts with clearly established State law as set forth fully in Petitioners' Jurisdictional Statement under title of Jurisdiction and Venue, at pp. 7-11, and will not be reiterated here. Petitioners respectfully submit that such conflicts need clarification and correction by this Court in order to avoid future reliance by others upon the erroneous conclusions of procedural law set forth in the trial court's opinion, thereby subjecting officials of the State of Texas to suits in any and all of the United States District Courts of this State.

2. Petitioners are acutely aware that this Court has decided a number of important cases from various states involving legislation authorizing loyalty oaths, and each of these cases is important and far reaching, but Petitioners respectfully submit that none of these cases have considered nor foreclosed the constitution-

ality of legislation similar to the one involved in this cause. The questions involved are important not only to the individual citizens affected, but also to the State of Texas, and this Court should not summarily decide these questions but should at least give the respective parties a chance to orally argue and fully present their case, especially since Congress has wisely seen fit to give parties in cases such as this one the right to appeal. Which right, we feel, has been summarily denied.

Mr. Justice Douglas has clearly recognized the intent of Congress in giving parties the right to appeal:

> "This case illustrates what I fear is a growing practice of the Court of diluting the Act of Congress which gives us jurisdiction of appeals. 28 U.S.C. § 1253, et al. The Congress carved out a group of cases, of which this is one, that comes here of right and is not dependent, as are petitions for certiorari, on a vote of four Justices out of nine for an adjudication by the Court on the merits of the controversy. In recent years the Court has more and more dismissed or affirmed appeals, with no opportunity of counsel to make oral argument and without any opinion by the Court." 347 U.S. 439, 74 S.Ct. 623, 98 L.Ed. 826, (1954).

CONCLUSION

For the above stated reasons, Petitioners respectfully request this Court to withdraw its per curiam opinion of January 15, 1968 and give the respective parties an opportunity to fully submit this cause to the Court, thus permitting this Court to correct the serious errors committed by the court below.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

A. J. CARUBBI, JR.
Executive Assistant

J. C. DAVIS
Assistant Attorney General

W. O. SHULTZ II

W. O. SHULTZ II
Assistant Attorney General

JAMES C. MCCOY
Assistant Attorney General

Counsel for Petitioners

Box R
Capitol Station
Austin, Texas 78711

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

W. O. SHULTZ II

W. O. SHULTZ II
Counsel for Petitioners

CERTIFICATE OF SERVICE

I, W. O. Shultz II, one of the attorneys for the appellants, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the —— day of ————, 1968, I served a copy of the foregoing Petition for Rehearing on the appellees by depositing a copy in the United States Mail as certified mail with prepaid postage and addressed to the attorney of record for said appellees as follows: David R. Richards, 1601 National Bankers Life Building, Dallas, Texas 75201.

W. O. SHULTZ II

W. O. SHULTZ II
Assistant Attorney General of Texas